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August 22, 2012

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FILED/ACCEPTED

AUG 22 2012

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: For Public Inspection
Adak Eagle Enterprise, LLC - For Public Inspection Version of Third Submission of
Supplemental Information in WC Docket Nos. 10-90, 07-135, 05-337 and 03-109; CC
Docket Nos. 01-92 and 96-45; WT Docket No. 10-208; GN Docket No. 09-51**

Dear Ms. Dortch:

On behalf of Adak Eagle Enterprises, LLC (“AEE”) and in accordance with the Protective Order adopted in the above referenced proceedings, please find enclosed two copies of AEE’s Public Inspection version in redacted form of its Third Submission of Supplemental Information filed in the aforementioned dockets. The [] symbols in the Public version denote redacted Confidential Information. A Confidential version is being filed separately with the Secretary’s Office and the Wireline Competition Bureau.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Sincerely,



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(202) 457-7535
Counsel for Adak Eagle Enterprises, LLC

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Office of the Secretary

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Third Submission of Supplemental Information**
WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-
45, GN Docket No. 09-51, WT Docket No. 10-208.
Petitions for Waiver – Adak Eagle Enterprises and Windy City Cellular¹

Dear Ms. Dortch:

This letter supplements the filings submitted by Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”) on Monday, August 20 and Tuesday, August 21, providing information in response to questions first raised on Friday, August 17 during a conference call with Commission staff in the Wireline Competition Bureau (“WCB”) and the Wireless Telecommunications Bureau (“WTB”).²

On Tuesday, August 21, the same day AEE and WCC provided their second submission of supplemental information in response to Friday’s conference call, and only nine days before a decision was anticipated pursuant to the Commission’s 90-day shot clock,³ the WCB and WTB

¹ See Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, filed May 22, 2012; *see also* Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, *et al.*, filed April 3, 2012.

² See Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice and Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated August 20, 2012 (“AEE August 20, 2012 Ex Parte”); Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Second Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated August 21, 2012.

³ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, ¶ 544 (2011) (“USF/ICC Transformation Order”).

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memorialized their questions in a letter to AEE and WCC and stopped the Commission's deadline for rendering a decision.⁴ The Bureaus stated in their letter that they would restart the clock "once the new evidence has been provided to us in a format and with sufficient explanation and back-up information to enable us, and third parties entitled to have access to the information, to adequately evaluate it."⁵ AEE and WCC reiterate their request that staff inform them as soon as possible whether the information submitted Monday, August 20, Tuesday, August 21, and today has been provided in a format sufficient to access and adequately evaluate it. AEE and WCC continue to compile and provide information responsive to the new information requested and intend to provide all of the remaining information requested by the end of this week.

For the reasons set forth in the filings submitted on August 20 and August 21, AEE repeats its request for interim relief in the form of a stay of the implementation of Section 54.302 of the Commission's rules while the Bureaus continue their review and evaluation process. Without interim relief, AEE will be losing money each month and will be unable to meet its financial obligations. The company currently is at a standstill until it knows when the Commission will make a final decision, whether it will receive relief, and if so, what level of relief the Commission will provide. For example:

1. AEE is currently unable to implement software updates relating to customer service and switching functions.
2. The University of Alaska was awarded federal funding to monitor volatile weather activity in the Aleutian Islands. However, AEE is unable to expend the funds to build out the fiber necessary for the university to perform that function because it is uncertain whether it will have sufficient funding.
3. A contractor for Conoco Phillips (OSC) plans to build a logistics support terminal on Adak Island to support the oil and gas industry's operations off of Alaska's North Slope. The terminal would provide a deepwater facility that is ice-free year-round with housing, office space, fuel capability, runways, and the infrastructure to support the equipment and personnel for exploratory drilling and production facilities. However, AEE cannot build fiber out to the required areas as long as it is uncertain whether, and if so, how much relief it will receive.
4. AEE is currently unable to meet requests from its customers to provide additional WiFi hotspots in the downtown area and near the White Alice cell site.

⁴ See Letter from Julie A. Veach, Chief, WCB, and Ruth Milkman, Chief, WTB, Federal Communications Commission, to Larry Mayes, WC Docket No. 10-90, *et al.*, dated August 21, 2012 ("WCB/WTB Letter").

⁵ *Id.* at 6.

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5. AEE is currently unable to provide additional WiFi broadband service on the north side of Adak Island for contractors performing cleanup of explosive ordinances still buried in the ground.

The annual window of opportunity for AEE to perform the necessary trenching, splicing and other work to build out fiber is closing in two weeks due to the weather conditions on Adak Island. Interim relief in the form of a stay would allow AEE to continue its current operations while the Bureaus complete their review of the additional information provided by AEE and WCC.

In further response to the questions first raised by staff on August 17 and memorialized in the Bureaus' letter of August 21, AEE and WCC provide this third set of supplemental information.

Questions for AEE:⁶

In addition to providing information in response to the specific questions below, AEE provided its 2012 financial statements in the Ex Parte Notice filed on Monday, August 20, 2012.

1. **Please explain in detail what has driven AEE's costs to increase between 2005 and today. In response to this question, please provide actual cost data with appropriate explanations for the significant increases in cost.**

Information explaining AEE's increase in costs was provided in the Ex Parte Notice filed on Monday, August 20, 2012. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

Additionally, AEE is compiling information comparing cost data to average line counts from 2006 to 2012, and will submit it as soon as possible this week.

2. **The names, positions, responsibilities and annual compensation for the 10 highest paid employees for AEE and each of its affiliates for the years 2009 – 2011. Provide employment agreements, if any, with these individuals. In addition to salary, include as part of compensation any benefits, dividends, increases in equity, sales of equity, or any other non-salary forms of compensation.**

The names of the 10 highest paid employees, as well as additional employee information requested by WCB staff for the years 2009-2011, are being compiled and will be provided this week.

⁶ Full versions of the questions, including confidential financial data, are not set forth in this letter in order to facilitate submission of a public filing. Full versions of the questions are available in the WCB/WTB Letter.

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Additional information regarding employee compensation was provided in the Ex Parte Notice filed on Monday, August 20, 2012. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

3. Please explain the need for the size of your corporate staff given that AEE has approximately 150 subscriber lines.

This information was provided in the Ex Parte Notice filed on Monday, August 20, 2012. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

4. Given that the same staff operates both the regulated wireline business and the non-regulated business, please explain the percentage of corporate operations expense allocated to the regulated operations.

Detailed information regarding the allocation of expenses between regulated and non-regulated operations was provided in the Cost Allocation Manual ("CAM") contained in Exhibit 8 of AEE's Petition for Waiver.

The percentage of corporate operations expense allocated to regulated operations reflects the fact that AEE owns all of the infrastructure, fiber, and circuit equipment in addition to the automobiles and equipment necessary for maintenance. AEE's affiliates pay AEE to use the infrastructure through tariffs and agreements. AEE also bills its affiliates for all shared services, including labor and benefits, rack space, utilities, automobile and equipment spreads, insurance, and all supplies, even including paper and ink.

5. Given the size of AEE's operations, please explain the company's telephone and postage expenses.

Information regarding AEE's telephone and postage expenses is attached hereto at Attachment 1.

If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

6. Please itemize AEE's 2011 lobbying expenses and explain the reason for each item. Please provide a list of all recipients of gifts during 2011 and the reason for each gift.

Information regarding AEE's lobbying expenses and gifts is attached hereto at Attachment 1.

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If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

7. **In response to AEE's petition, GCI provided the testimony of Michelle D. Barnett. In this testimony, Mrs. Barnett states that AEE's Continuing Property Records (CPRs) "indicate since the USF money started flowing AEE has invested in a list of certain items. Please explain how the specific expenses highlighted in Mrs. Barnett's testimony are necessary to the provision, maintenance, and upgrading of facilities and services supported by universal service. Please also provide the CPRs for AEE and any of its affiliates (if available) for each of the last three years.**

Copies of AEE's CPRs, as well as ETC filings, were provided in the Ex Parte Notice filed on Monday, August 20, 2012. Additionally, explanations were provided regarding how the specific items referenced by Mrs. Barnett are necessary for the provision, maintenance, and upgrading of facilities and services supported by universal service.

A copy of WCC's CPRs was provided in the Second Submission of Supplemental Information filed on Tuesday, August 21, 2012.

If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it. As already noted, in order for AEE and WCC to submit the back-up files for the CPRs provided, the company would have to scan and create zip files of over 3,000 pages of invoices. Because it will require significant resources to scan 3,000 pages of documents, we are checking first to see if the CPRs already provided are sufficient.

8. **Please provide the number of AEE employees who work in the Anchorage office, the number of employees who work on Adak Island and for those employees who split their time between Anchorage and Adak Island, the percentage of time these employees spend in Anchorage.**

This information was provided in the Ex Parte Notice filed on Monday, August 20, 2012. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

9. **Please list and provide details of all lease agreements, if any, between AEE and affiliated and non-affiliated companies in effect for the last three years, including the purpose of the lease agreements. Provide copies of all listed lease agreements.**

Copies of AEE's lease agreements with non-affiliate and affiliated companies were provided in the Ex Parte Notice filed on Monday, August 20, 2012.

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Further clarifying information related to AEE's lease agreements with L&A Property, LLC and Adak Cablevision, LLC, was provided in the Second Submission of Supplemental Information filed on Tuesday, August 21, 2012.

If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

- 10. Please include copies of any contracts entered into between AEE or WCC and any business or governmental entities which pertain to the provision of fixed or mobile voice and/or broadband service, including collocation, access or other similar services.**

A copy of WCC's agreement with Marine Exchange of Alaska, Inc. is attached hereto at Attachment 4.

- 11. Please provide additional information about what was included in AEE's external relations expenses, including the cost studies and consulting contracts, advertising and corporate image expenses. Please also discuss the percentage of time that Ms. Weaver spends on external relations and what those duties include.**

This information is attached hereto at Attachment 2. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

- 12. Exhibit 8, pages 5 and 13 of the Adak Eagle Enterprises, LLC and Subsidiary 2010-2011 audited financial statements, specifically the income statement, discloses an income tax benefit for 2011. We understand such an item to represent some type of reduction in tax liability, and as such it would normally be an addition to income. Why was the tax benefit subtracted from income on this statement? Also, page 14, Note 3, reflects that AEE has a certain amount remaining in federal net operating loss carry forwards, which expire in 2029. If so, why did AEE not use this operating loss carry forward to further reduce its income tax liability in 2010.**

This information was provided in the Second Submission of Supplemental Information filed on Tuesday, August 21, 2012. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

- 13. Please provide copies of loan documents from all entities to which AEE is currently indebted directly or indirectly, including RUS, Rural Telephone Bank, Federal Financing Bank and L&A, LLC, and any others. Loan documents should include:**

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- a. **The original loan package and modifications/updates submitted for evaluation for credit sent to each of these entities;**
- b. **All correspondence to/from creditors since 2008 regarding any issue directly or indirectly involved with compliance with loan agreement covenants and related replies; and**
- c. **All security agreements and financing statements.**

Copies of AEE's RUS loan documents, as well as additional Wells Fargo loan documents, were provided in the Ex Parte Notice filed on Monday, August 20, 2012.

Copies of additional RUS correspondence were provided in the Second Submission of Supplemental Information filed on August 21, 2012.

If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

Questions for WCC:

1. **Please provide an explanation for any projected increase in cost greater than 10% (from Actual Base Yr 12/31/11 to 2012-2016) for any cost category. For example, in revised Exhibit 8 of WCC's petition, WCC projected a substantial increase in certain expenses from the Base Year 2011. In addition, the second to last page on Original Exhibit 8 projects significant increases for certain expenses. Please provide the attachment mentioned in the notations that provides additional information regarding the breakdown.**

AEE is compiling this information for Commission staff and intends to submit it as soon as possible this week.

2. **Please provide the type and amount of any expenses paid by WCC to AEE for each of the last three years. Please explain the reason for any increases greater than 10% for any category of expense.**

This information is attached hereto at Attachment 3. If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

3. **Please provide an updated estimate for 2012 of the cost associated with WCC's retail operations in Adak. Discuss all components of this estimate, including but not limited to the retail lease, handset inventory and personnel costs. Additionally, please explain the business rationale for this expense.**

WCC is compiling an updated 2012 estimate of the costs associated with the retail store and intends to submit it as soon as possible this week.

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Information regarding the business rationale for WCC's retail store was provided in the Second Submission of Supplemental Information filed on Tuesday, August 21, 2012.

If the Bureaus require submission of this information in a different format, or require additional details, AEE and WCC stand ready to provide it.

As AEE and WCC reiterated on the August 17 call with Commission staff, they recognize and appreciate that it is the responsibility of Commission staff to carefully safeguard the Universal Service Fund and ensure that it is being used appropriately, and respect that staff would like additional information to understand their requests for support.

AEE and WCC continue to emphasize that as a matter of process, it is unsettling and distressing that the Commission may potentially allow additional USF funding cuts to take effect while it takes time to evaluate the newly requested information. They are working hard to respond, as quickly as possible, to the numerous additional questions asked by staff during Friday's discussion and as memorialized in yesterday's letter stopping the review clock. However, these new sets of questions require detailed responses involving pulling and going through several years of historical files. As a result of the USF funding cuts that have already taken effect, they have had to terminate approximately one-third of their work force. Ms. Weaver also noted that August is a particularly intensive month for regulatory filings. They are in the midst of preparing state filings and federal filings that are due later in August and in September, in addition to maintaining the regular operations of the companies.⁷

As stressed in meetings and previous filings, AEE and WCC made tremendous good faith efforts to provide full information to the Commission, and expended substantial time, labor, and financial resources to include in their initial Petitions, which were filed in April and May, all of the detailed information required by the *USF/ICC Transformation Order*.⁸ They also have expended significant additional resources for Mr. Mayes and Ms. Weaver to travel to Washington, D.C. from Alaska twice to meet with Commission staff for the purpose of providing information, answering questions, and explaining the information submitted in support of their Petitions.⁹

⁷ See AEE August 20, 2012 Ex Parte at 2, n.3.

⁸ See *USF/ICC Transformation Order*, Section G.

⁹ See Letter from Monica Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated April 6, 2012 (memorializing April 4, 2012 meetings with Commission staff); Letter from Monica Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated April 9, 2012 (memorializing April 5, 2012 meetings with Commission staff); Letter from Jennifer L. Richter, Counsel, Windy City Cellular, LLC and Adak Eagle Enterprises, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated May 17, 2012 (memorializing May 15, 2012 meetings with Commission staff); Letter from Monica Desai, Counsel, Windy City

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Furthermore, since filing their Petitions, AEE and WCC have filed additional information, and through their counsel, have regularly contacted Commission staff to check to see if any more additional information might be needed from either company and to volunteer their assistance in answering any questions the staff might have.

As also explained in prior filings, the current cuts in the support to WCC (even with the interim partial relief granted to WCC while the Commission is evaluating a solution for AEE and WCC as a whole) also has already had the following additional detrimental impacts: (1) AEE has dropped below the tier classification requirements of its RUS loan covenants – potentially triggering default on its RUS loan; (2) there is no longer any needed backhaul redundancy, which leaves all WCC customers without service when outages occur due to the extremely challenging weather conditions in Adak; (3) WCC does not have the funds needed to upgrade its facilities to 3G (LTE) service; (4) WCC does not have the funds for software needed to track and bill the roaming minutes on its network; (5) WCC abandoned its plans to construct a Clam Lagoon site, intended to enable greater network redundancy, despite having undergone six months of planning;¹⁰ and (6) the retail store on Adak Island can no longer support a full-time employee, and as a result that employee is now only working 20 hours per week and has lost her health benefits.

If the reduction in support to AEE is allowed to take effect pursuant to the *USF/ICC Transformation Order*, both companies will be severely impacted. To avoid further detrimental impact, and to avoid a default on AEE's RUS loan, AEE emphasizes its need for interim relief while FCC staff completes its evaluation of this newly requested information. AEE's 2012 financial statements, submitted with the Ex Parte Notice filed on August 20, reflect that WCC, AEE's wireless affiliate, is already operating at a loss, even with the interim relief provided to WCC by the Commission.¹¹ When WCC's costs and revenues are separated out, the financial statements illustrate that, without interim relief, AEE will also begin operating at a loss on September 1. AEE will be forced to shut down by December 31, 2012.

AEE and WCC continue to stand ready to provide any additional information that Commission staff may request. However, AEE respectfully requests interim relief in the form of a stay of the implementation of Section 54.302 of the Commission's rules while the Bureaus continue their review process. AEE makes this request based on the timing of these new information requests, combined with AEE's and WCC's good faith efforts over the past five months to provide the

Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated May 21, 2012 (memorializing May 17, 2012 meetings with Commission staff).

¹⁰ See Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket 10-90 *et al.*, dated June 11, 2012; Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Submission of Supplemental Information, WC Docket 10-90 *et al.*, dated July 13, 2012.

¹¹ See *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, DA 12-923 (rel. June 12, 2012).



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Commission with timely and full information, the financial strain that has already been put on the companies by the funding cuts that have already taken effect, and, most critically, because AEE will be operating at a loss and in danger of defaulting on its RUS loans if additional funding cuts are allowed to take effect while the Commission evaluates the newly requested information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Monica S. Desai".

Monica S. Desai
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(202) 457-7535
*Counsel to Adak Eagle Enterprises, LLC
and Windy City Cellular, LLC*

cc:

Patrick Halley
Amy Bender
Katie King
Susan Miller
Soumitra Das
Gary Michaels
Mark Rossetti
Ruth Milkman
Julie Veach
Carol Matthey
Sue McNeil
Jane Jackson
Margaret Wiener
Jonathan Chambers
Christine Kurth
Angela Kronenberg
Louis Peraertz
Courtney Reinhard
Michael Steffen
Priscilla Delgado Argeris

Information Regarding Telephone, Postage, and Lobbying Expenses

Attachment 1

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Entire Attachment Redacted For Public Inspection

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External Relations Information

Attachment 2

[[

Entire Attachment Redacted For Public Inspection

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Explanation of Expenses Paid by WCC to AEE

Attachment 3

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Entire Attachment Redacted For Public Inspection

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**Marine Exchange of Alaska, Inc.
Agreement**

Attachment 4

[[

Entire Attachment Redacted For Public Inspection

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Declaration of Andilea Weaver

Attachment 5

DECLARATION OF ANDILEA WEAVER
ADAK EAGLE ENTERPRISES, LLC AND WINDY CITY CELLULAR, LLC

I, Andilea Weaver, declare the following is true and correct to the best of my knowledge and belief:

I am the Chief Operations Officer of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC. I have reviewed the attached Third Submission of Supplemental Information, including all attachments, and attest, under penalty of perjury, that the facts contained therein are known to me and are accurate.

Executed on this 22nd day of August 2012.

A handwritten signature in black ink that reads "Andilea Weaver". The signature is written in a cursive style with a large initial "A".

Andilea Weaver
Chief Operations Officer
Adak Eagle Enterprises, LLC and
Windy City Cellular, LLC